


David J. Bradley, Clerk

state prisoner seeking federal habeas relief must exhaust all claims in state court first. *Mercadel v. Cain*, 179 F.3d 271, 275 (5th Cir. 1999). A claim is not exhausted unless the habeas petitioner provides the highest state court with a fair opportunity to pass upon the claim, which in turn requires that the petitioner present his claims before the state courts in a procedurally proper manner according to the rules of the state courts. *Id.* Mayberry's petition must be dismissed.¹

The Respondent's motion for summary judgment (Dkt. 12) is **GRANTED**. This habeas petition is **DISMISSED** without prejudice. A certificate of appealability is **DENIED**. This is a **FINAL JUDGMENT**.

The Clerk will provide a copy of this Order to the parties.

SIGNED at Galveston, Texas on December 5, 2017.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE

¹ The Court further notes that it cannot locate Mayberry on the Texas Department of Criminal Justice website. If Mayberry has been released, his request for mandatory supervision release is now moot, and the Court lacks jurisdiction over this petition.